

The Orissa Gazette



EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1627 CUTTACK, THURSDAY, NOVEMBER 16, 2006/KARTIKA 25, 1928

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd November 2006

No. 9550-li/1(S)-67/1998-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th March 2006 in Industrial Dispute Case No. 2 of 1999 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the management of Shri Pitabasa Mishra, Proprietor and Publisher, Utkal Mail C/23-1, Industrial Estate, Rourkela-769 004 and its workman Shri Maheswar Rath, State Level Correspondent, Utkal Mail, Qrs. No. IV-B-51/1, Unit-3, Kharvelanagar, Bhubaneswar was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 2 OF 1999

Dated the 28th March 2006

Present:

Sk. Jan Hossain, o.s.j.s. (Sr. Branch)
Presiding Officer, Industrial Tribunal
Bhubaneswar.

Between :

Shri Pitabasa Mishra .. First Party—Management
Proprietor and Publisher, Utkal Mail
C/23-1, Industrial Estate
Rourkela-769 004.

And

Shri Maheswar Rath .. Second Party—Workman
State Level Correspondent
Utkal Mail, Qrs. No. IV-B-51/1, Unit-3
Kharvelanagar, Bhubaneswar, Orissa.

Appearances :

For the First Party—Management	..	None
For the Second Party—Workman himself	..	Shri Maheswar Rath

AWARD

The Government of Orissa, in the Labour & Employment Department, in exercise of powers conferred upon them by sub-section (5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following dispute for adjudication vide their Order No. 15585—li/1 (S)-67/1998-L.E., dated the 31st December 1998 :—

“Whether the termination of services with effect from the 28th April 1997 of Shri Maheswar Rath, Journalist by the management of M/s Utkal Mail, Rourkela is legal and justified ? If not, to what relief Shri Rath is entitled ?”

The dispute between the parties arose under the following circumstances :

2. The second party-workman was appointed as a State Level Correspondent and was posted at Bhubaneswar vide his letter of appointment, dated the 24th December 1991 with a consolidated salary of Rs. 1,500 per month. It is stated that although the said salary was much less than the Bachhawat Wage Board scales of pay, the workman accepted the said salary as the management promised to implement the said scale after six months. After several approaches when the management did not pay any heed to the grievance of the workman for raising his salary as promised, he knocked the door of the D. L. O., Khurda for realisation of his unpaid salary. The management without taking any initiative on the claim of the workman, asked the State Government to withdraw accreditation facility from the workman and finally terminated his service with effect from the 28th April 1997 without serving any notice. It is further stated that as the performance of the second party was satisfactory, the management applied of its own to the State Government to confer accreditation to the second party and accordingly declared him as an accredited State Level Correspondent of M/s Utkal Mail. The second party challenged his removal from service as an arbitrary action of the management, which is in complete violation of the provisions of Section 25-F of the Industrial Disputes Act and has thus prayed for his reinstatement in service with continuity in service and full back wages.

3. In its written statement the management contended that the reference is not maintainable ; there being no employer-employee relationship between the parties and further, the second party is not a ‘workman’ as defined under Section 2(s) of the Industrial Disputes

Act. The management stated in the written statement that no such appointment order was issued to the second party. It is the consistent stand of the first party that the second party voluntarily abandoned his job and there has been no such termination, as alleged by him. The first party, in the circumstance, has contended that there being no termination, the question of compliance of the provisions of the Industrial Disputes Act does not arise and accordingly, it has prayed for to answer the reference in its favour.

4. On the basis of the pleadings of the parties, the issue that has been framed in this case is as follows :—

ISSUES

“Whether the termination of services with effect from the 28th April 1997 of Shri Maheswar Rath, Journalist by the management of M/s Utkal Mail, Rourkela is legal and justified ? If not, to what relief Shri Rath is entitled ?”

5. On the 14th December 2005, to which date the case was posted for hearing, the management did not appear nor took any step for which it was set *ex parte*. In the hearing, the workman examined himself and got marked Exts. 1 to 10.

6. The second party on oath has stated before this Tribunal in his evidence that he was a State Level Correspondent under the management and has proved his appointment letter marked Ext. 1. He stated that considering his performance the management had applied to the State Government to confirm accreditation to the second party vide Ext. 2. It is in his evidence that as the management did not pay him the agreed salary, he made a claim before the D. L. O., Bhubaneswar as per Ext. 3. He has proved Ext. 4, character certificate issued in his favour, Ext. 5, a momento given to the second party and Ext. 6, an Admit Card issued in favour of the second party for entry into the Assembly Hall during Assembly Session. He further stated in his evidence that he had rendered around six years of regular service by the date of his removal, i.e. the 23rd April 1997 and before removing him from service the management had not complied with the provisions of the Industrial Disputes Act, inasmuch as, no prior notice and compensation as required under Section 25-F of the Industrial Disputes Act was given before taking action against him. It is also stated by him that at no point of time he was ever charge sheeted for any misconduct. He denied to have received any bonus or leave encashment benefits at any time during his service period.

7. Keeping in view the unchallenged evidence on record, both oral and documentary, I find that the claim of the second party-workman is well substantiated through him in his

evidence. In absence of any evidence to the contrary, I hold that the termination of service of the workman with effect from the 28th April 1997 without following the provisions laid down in Section 25-F of the Industrial Disputes Act, is illegal as well as unjustified. Hence, the workman is held entitled to reinstatement in service with 50% back wages.

The reference is answered accordingly.

Dictated and corrected by me.

Sk. JAN HOSSAIN

28-3-2006

Presiding Officer

Industrial Tribunal, Bhubaneswar

Sk. JAN HOSSAIN

28-3-2006

Presiding Officer

Industrial Tribunal, Bhubaneswar

By order of the Governor

N. C. RAY

Under-Secretary to Government